IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1366 OF 2005
IN
SUMMARY SUIT NO.1946 OF 2003

Tata Motors Ltd. & Anr. ..Plaintiffs.

Vs.

Malabar Automobiles Pvt. Ltd. ..Defendants.

Mr.G.R.Joshi with Mr.A.V.Joshi & Mr.Vipul Bilve i/b.M/s. Mulla & Mulla for the Plaintiffs.

Mr.Virag Tulzapurkar with Ms.Aiyer i/b.M/s.Doijode & Associates for the Defendants.

CORAM: S.J.VAZIFDAR, J.
DATED: 10TH JANUARY, 2006.

P.C. :

The Chamber Summons is for amendment of the plaint.

2. By an order dated 24.6.2005 in Company Petition No.257 of 2005 this Court sanctioned a scheme of amalgamation between Plaintiff No.1 and Plaintiff No.2 Tata Finance Ltd. By virtue of the said order, inter-alia, Plaintiff No.2 (transferor company) stood merged in and amalgamated with Plaintiff No.1. Under clause 5.1 of the said scheme, Plaintiff No.2 stood

amalgamated with Plaintiff No.1 and all the assets and debts, outstandings etc. concerning Plaintiff No.2 stood transferred to and vested in Plaintiff No.1. Under clause 6.1 all suits, actions and proceedings by and against Plaintiff No.2 pending on the effective date were not to stand abated or to be discontinued nor to be in any way prejudicially affected but were to be continued and enforced by and against the transferee company i.e. Plaintiff No.1. Under clause 14.1 on the scheme becoming effective, Plaintiff No.2 stood dissolved without being wound up and without any further act of the parties.

3. This Chamber Summons is taken out in view of the aforesaid order of amalgamation. In the proposed amendment, the Plaintiff seeks to delete the name of Plaintiff No.2 and to bring on record the aforesaid order of amalgamation.

4. Mr.Tulzapurkar, did not object to the fact of the order of amalgamation being brought on record. He however objected to the deletion of Plaintiff No.2. According to him the same would prejudicially affect

the Defendant's defence to the effect that Plaintiff No.2 having been paid the entire amount claimed in the suit by Plaintiff No.1, did not have any cause of action in the suit.

5. It is difficult to see how the Defendant's defence can in any manner be prejudicially affected by this amendment. This deletion of Plaintiff No.2 is pursuant to the order of amalgamation and, in any event, at the risk of the Plaintiff. It will be open to the Defendants to contend that Plaintiff No.2 not having had any right to maintain the suit or the claim made therein Plaintiff No.1 by virtue of the said order did not acquire any further rights either. The tenability of such a defence is another matter to be decided at the hearing.

6. The judgment of the Supreme Court in *OM PRAKASH GUPTA V. RANBIR B. GOYAL (2002) 2 SCC 256* relied upon by Mr.Tulzapurkar is of no assistance to him. It in fact supports the grant of the amendment as it falls within the ratio in paragraph 11 thereof which reads as under :-

> "11. The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied : (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted ; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties ; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise."

7. In the circumstances, the Chamber Summons is made absolute in terms of prayer (a).

8. The Plaintiff shall pay the costs of this Chamber Summons quantified at Rs.2500/- to the Defendants within four weeks from today.

This order is without prejudice to the pending interlocutory proceedings and orders, if any, therein.